

CALIFORNIA COASTAL COMMISSION

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W18a

September 21, 2001

TO: Commissioners and Interested Persons

FROM: Tami Grove, Deputy Director
Charles Lester, District Manager
Rick Hyman, Deputy District Chief Planner

SUBJECT: **CITY OF MARINA: LOCAL COASTAL PROGRAM MAJOR AMENDMENT NO. 1-01.** For public hearing and Commission action at its meeting of October 10, 2001, to be held in the City of Coronado at the Hotel Del Coronado, 1500 Orange Avenue, Coronado, CA 92118.

I. SUMMARY OF STAFF REPORT**Amendment Description**

The City of Marina proposes to change the land use designation of parcel 033-111-007 and the adjacent right-of-way at the Northeast corner of the intersection of Reservation Road and Seaside Circle from General Commercial to Visitor-Oriented Commercial (Land Use Plan Amendment). The City also proposes to change the Implementation Plan's zoning designation of the existing unimproved street right of way abutting the parcel along Reservation Road from Open Space (O/ C-P) to Planned Commercial (PC/C-P) and the existing unimproved street right-of-way abutting the parcel along Seaside Circle from One-Family Residential (R-1/ C-P) to Planned Commercial (PC/C-P) (please see Exhibit 1). Staff has reviewed the proposed amendment to the Land Use Plan for conformance with the Coastal Act. As discussed in detail below, Staff recommends approval of the City of Marina LCP proposed Land Use Plan Major Amendment No. 1-01, if it is modified to address LCP limitations concerning identification and mitigation of potential habitat impacts. Staff also recommends approval of the amendment to the City's Implementation Plan as modified, as adequate to carry out the modified LUP.

The Commission certified the City of Marina's Local Coastal Program on April 20, 1982. The City has organized and submitted this LCP amendment request in accordance with the standards for amendments to certified LCPs (Coastal Act Section 30514, California Code of Regulations 13551 through 13553). The amendment was filed on June 1, 2001. The City Council held noticed public hearings. In addition, noticed public hearings at the Planning Commission level were held. Commission staff requested and was granted a one-year time extension for action on the LCP amendments at the Commission's August 2001 meeting. The City of Marina has also approved a coastal development permit for an 80 unit hotel on the site, subject to Commission approval of this amendment. The CDP for the hotel is not within the appeal jurisdiction of the

**California Coastal Commission**

Commission.

Further information on the submittal may be obtained from Mike Watson at the Central Coast District Office of the Coastal Commission at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

Standard of Review

The standard of review for land use plan amendments is that they must be consistent with the resource protection policies of the Coastal Act. The standard of review for implementation amendments is that they must be consistent with and adequate to carry out the policies of the certified coastal land use plan.

Staff Recommendation

Staff recommends that the Commission deny both the Land Use Plan (LUP) and Implementation Plan (IP) as submitted, and approve the LUP and IP, only if modified as set forth below.

The primary purpose of the current proposal is to change the land use designation of the site from General Commercial to Visitor-Oriented Commercial, and the zoning of the abutting street right-of-way from a combination of Open Space and Low Density Residential to Planned Commercial, to allow for development of an eighty-unit hotel with meeting rooms and associated facilities.

The proposed amendment (MAR-MAJ-1-01) to the Land Use Plan would allow development of the subject site as a visitor-oriented hotel. The task at hand is to determine whether a visitor-serving use is an appropriate use on the site. The current land use designation allows for a hotel at the site, though re-designation of the land use and subsequent development gives priority to visitor-oriented commercial and recreational use over other development types, consistent with Coastal Act policy 30222. The second issue of concern regarding the proposed amendment to the LUP is protection of coastal resources, such as sensitive dune habitat. The land in the coastal zone that would be affected by the amendment includes habitat values that support sensitive plant species which, because of their scarcity, may qualify as ESHA under Coastal Act Section 30240. The proposed amendment to the LUP does not provide adequate protection for sensitive resources, which may require mitigation. Therefore, staff recommends denial of the amendment of the LUP as proposed, and recommends approval of the amendment to the LUP only as modified to expand the definition of primary habitat and include specific mitigation criteria.

The second component of the LCP amendment involves determining whether the proposed amendment to the City's Implementation Plan is consistent with and adequate to carry out the intent of the certified Land Use Plan as amended and modified. The visitor-oriented commercial zoning is certainly consistent with and adequate to carry out the intent of the LUP designation of the same. With respect to coastal resource protection measures and sensitive species habitat, the proposed amendment to the IP does not provide adequate guidance for the protection and maintenance of affected coastal resources. Similar to the LUP, the IP will require additional modification to be found consistent with and adequate to carry out the intent of



the modified LUP amendment. Therefore, staff recommends denial of the amendment of the IP as proposed, and recommends approval only if modified to expand the definition of primary habitat and to include minimum habitat mitigation and restoration plan requirements.

Summary of Issues and Comments

City hearings on the amendment occurred on January 25, 2001, February 20, 2001 and March 6, 2001. These hearings on the LCP amendment elicited several comments, though much of the testimony focused on matters not in the Commission's purview (e.g., labor concerns). However, significant environmental concerns were raised during the meetings as well and are summarized below. After taking comments at its March 6, 2001 meeting, the Marina City Council approved Resolution 2001-06 amending Marina's Local Coastal Land Use Plan changing the land use designation of the site. The City Council subsequently adopted Resolution 2001-04 amending its Local Coastal Implementation Plan (Zoning Map) on March 20, 2001.

A review of the correspondence in the submittal reveals the following generalizations. There were several comments regarding potential impacts from increased illumination on Locke Paddon Park, especially with regard to sign placement and height of the proposed building, those interested argued that additional screening and proper sign placement could reduce potential impacts. The project met with less-than-favorable reaction from persons concerned about direct impacts to sensitive plant and animal species as the result of developing the subject site. Those commenting are concerned that the 1988 EIR on the subject site is out-dated and does not provide adequate mitigation measures to protect plant and animal species. Finally, there was comment taken from an adjacent property owner who expressed some concern about being able to access his property once the hotel development was in place. Specifically, the adjacent property owner wished to secure an easement across the applicant's property.



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EXHIBITS

Exhibit 1: Land Use Plan Map & Zoning Map

Exhibit 2: Habitat Map

Exhibit 3: Aerial Site View

Exhibit 4: Mitigation and Restoration Plan

Exhibit 5: Hotel Drawings



II. STAFF RECOMMENDATION: MOTIONS AND RESOLUTIONS

The Commission must make four separate motions in order to act on this recommendation:

A. DENIAL OF LAND USE PLAN MAJOR AMENDMENT No. 1-01, AS SUBMITTED

MOTION 1:

“I move that the Commission certify Major Amendment No. 1-01 to the City of Marina Land Use Plan as submitted by the City.”

STAFF RECOMMENDATION OF DENIAL

Staff recommends a “NO” vote. Failure of this motion will result in denial of the land use plan amendment component as submitted and adoption of the following resolution and findings. The motion passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION:

The Commission hereby denies certification of Major Amendment No. 1-01 to the land use plan of the City of Marina as submitted and adopts the findings set forth below on the grounds that the amendment component, as submitted, does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment would not comply with the requirements of the California Environmental Quality Act because there are feasible alternatives or mitigation measures which would substantially lessen any significant adverse impact which the land use plan amendment may have on the environment.

B. APPROVAL OF LAND USE PLAN MAJOR AMENDMENT No. 1-01, IF MODIFIED

MOTION 2:

“I move that the Commission certify Major Amendment No. 1-01 to the City of Marina Land Use Plan as submitted by the City, if modified as suggested by Modifications A1 and A2 in this staff report.”

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED

Staff recommends a “YES” vote. Passage of this motion will result in certification of the amendment component with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of a majority of Commissioners present.

RESOLUTION:



The Commission hereby approves Major Amendment No. 1-01 to the land use plan of the City of Marina if modified according to suggested modifications and adopts the findings set forth below on grounds that the land use plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts which the land use plan amendment may have on the environment..

C. DENIAL OF IMPLEMENTATION PLAN MAJOR AMENDMENT No. 1-01, AS SUBMITTED

MOTION 3:

“I move that the Commission reject Major Amendment No.1-01 to the City of Marina Local Coastal Program Implementation Plan as submitted by the City.”

STAFF RECOMMENDATION OF REJECTION

Staff recommends a “YES” vote. Passage of this motion will result in rejection of Implementation Program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION:

The Commission hereby rejects Major Amendment #1-00 to the Implementation Plan of the City of Marina local coastal program, as submitted, and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted is not in conformity with the certified land use plan. Certification of the Implementation Plan amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program amendment as submitted.

D. APPROVAL OF IMPLEMENTATION PLAN MAJOR AMENDMENT No.1-01, IF MODIFIED

MOTION 4:

“I move that the Commission certify Major Amendment No.1-01 to the City of Marina Local Coastal Program Implementation Plan, if it is modified as suggested by Modifications B1 and B2 in the staff report.”



STAFF RECOMMENDATION TO CERTIFY IF MODIFIED

Staff recommends a “YES” vote. Passage of this motion will result in certification of the Implementation Plan amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION:

The Commission hereby certifies Major Amendment No.1-01 to the Implementation Plan of the City of Marina Local Coastal Program, as modified by Suggested Modification B-1, and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications will be in conformity with and adequate to carry out the certified land use plan. Certification of the Implementation Program amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following changes to the proposed Local Coastal Program amendments, which are necessary to make the requisite findings. If the local government accepts each of the suggested modifications within six months of Commission action, by formal resolution of the City Council, the corresponding amendment portion will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished.

A. Land Use Plan Modifications for Protection and Mitigation of Habitat Values

Revise the City’s 1982 certified Local Coastal Program Land Use Plan as follows:

1. Amend the LUP definition of “primary habitat” in Exhibit A as follows (additions **underlined and bold**):

Habitat – Primary habitat: This term includes all of the environmentally sensitive habitat areas in Marina. These are as follows:

1. *Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for the survival of an endangered species. These species will be collectively referred to as “rare and endangered.”*

....



4. Areas otherwise defined as secondary habitat that have an especially valuable role in an ecosystem for sensitive plant or animal life, as determined by a qualified biologist approved by the City.

2. Amend LUP Planning Guidelines on page 10 as follows (additions **underlined and bold**):

Because site-specific study is needed in many areas before any development can take place the following policies apply to all of the areas indicated on the map or meeting the definitions of Exhibit "A" [primary and secondary habitat] as being potential habitats for rare and endangered plants and animals.

....

- *Primary habitat areas shall be protected and preserved. All development must be sited and designed so as not to interfere with the natural functions of such habitat areas. Management and enhancement opportunities should be incorporated into use or development proposals; potential impacts shall be **fully mitigated, including the assurance of longterm mitigation and maintenance of habitat through the use of appropriate acreage replacement/restoration ratios for any unavoidable direct impacts to habitat areas.***
- *Potential secondary or support habitat areas to the primary habitats identified on the site should also be defined. Secondary habitat investigation should include identification of the role and importance of the secondary area to the primary habitat area and should stress the impact of use or development in the secondary area on the primary habitat. All development in this area must be designed to prevent significant adverse impacts on the primary habitat areas. In concert with State law, City ordinances shall require environmental review and appropriate mitigation of identified impacts for all development in the Coastal Zone, **including the assurance of longterm mitigation and maintenance of habitat through the use of appropriate acreage replacement/restoration ratios for any direct impacts to habitat areas.***

....

B. Implementation Plan Modifications for Protection and Mitigation of Habitat Values

Revise the City's 1982 certified Local Coastal Program Implementation Plan as follows:

1. Amend the IP definition of "primary habitat" and corresponding Ordinance 17.04.391 as follows (additions **underlined and bold**):



17.04.391 Habitat, primary. This term includes all of the environmentally sensitive **habitat** areas in Marina. These are as follows:

1. *Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for the survival of an endangered species. These species will be collectively referred to as “rare and endangered.”*

....

4. **Areas otherwise defined as secondary habitat that have an especially valuable role in an ecosystem for sensitive plant or animal life, as determined by a qualified biologist approved by the City.**

2. Amend the Implementation Plan and zoning ordinances as necessary to incorporate the following new habitat mitigation requirements:

a. **Minimum Habitat Mitigation/Restoration Plan Requirements.** All direct and potential impacts to primary and secondary habitats shall be fully mitigated. Appropriate acreage replacement/restoration ratios for any unavoidable direct impacts to habitat areas and buffer areas shall be applied to fully protect identified habitat. Habitat Restoration Plans shall be prepared and approved prior to issuance of any grading or building permits.

b. **Habitat Restoration Plan Requirement.** All habitat restoration, enhancement, and/or buffering plans shall be prepared by a qualified biologist and where appropriate, with the assistance of a qualified hydrologist. Plans shall be developed in consultation with the Department of Fish and Game and U.S. Fish and Wildlife Service in cases where these agencies have jurisdiction. The plans and the work encompassed in the plans shall be authorized by a coastal development permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the City. No changes to the approved final plans shall occur without a City-approved amendment.

The elements of such a plan shall at a minimum include:

(a) A detailed site plan of the entire habitat and buffer area with a topographic base map;

(b) A baseline ecological assessment of the habitat and buffer area, including but not limited to, assessment of biological, physical, and chemical criteria for the area;

(c) The goals, objectives, performance standards, and success criteria for the site, including specific coverage and health standards for any areas to be planted. At a minimum, explicit performance standards for vegetation, hydrology, sedimentation, water quality, and wildlife, and a clear schedule and procedure for determining whether they are met shall be provided. Any such performance standards shall include identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and



specification of the number of years active maintenance and monitoring will continue once success criteria are met. All performance standards shall state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes shall be part of every performance standard. Each performance standard shall identify: (1) the attribute to be achieved; (2) the condition or level that defines success; and (3) the period over which success must be sustained. The performance standards must be specific enough to provide for the assessment of habitat performance over time through the measurement of habitat attributes and functions including, but not limited to, wetland vegetation, hydrology, and wildlife abundance.

(d) The final design, installation, and management methods that will be used to ensure the mitigation site achieves the defined goals, objectives, and performance standards;

(e) Provisions for the full restoration of any impacts that are identified as temporary necessary to install the restoration or enhancement elements;

(f) Provisions for submittal, within 30 days of completion of initial (and subsequent phases, if any of) restoration work, of “as built” plans demonstrating that the restoration and enhancement has been established in accordance with the approved design and installation methods;

(g) Provisions for a detailed monitoring program to include at a minimum provisions for assessing the initial biological and ecological status of the site. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation;

(h) Provisions to ensure that the site will be promptly remediated if monitoring results indicate that the site does not meet the goals, objectives, and performance standards identified in the approved mitigation program and provisions for such remediation. If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program which did not meet the approved performance standards.

(i) Provisions for submission of annual reports of monitoring results to the City for the first five years after all restoration and maintenance activities have concluded (including but not limited to watering and weeding, unless weeding is part of an ongoing long-term maintenance plan) and periodic monitoring after that time, beginning the first year after submission of the “as-built” assessment. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the project in relation to the performance standards.



IV. RECOMMENDED FINDINGS

The Commission finds and declares the following for the proposed City of Marina Major Amendment No. 1-01 regarding the change in land use designation and zoning map change at the Northeast corner of Reservation Road and Seaside Circle:

A. Land Use Plan Amendment

1. Visitor-Serving Land Uses

a. Description and Background

The City of Marina is proposing to amend its Local Coastal Program (LUP and IP amendment) to allow the development of an 80-unit hotel on approximately 1.75 acres of land at the Northeast corner of Reservation Road and Seaside Circle in the City of Marina. The subject site includes a privately owned parcel by Bart Bruno, a small portion of an abutting parcel owned by Mr. Frank Herrod which Mr. Bruno intends to lease, and less than 0.5 acre of publicly owned land within the current City street right-of-way of Reservation Road and Seaside Circle (currently zoned as Open Space and R-1) which Mr. Bruno intends to acquire from the City of Marina. The Land Use Plan amendment would change the current land use designations to Visitor-Oriented Commercial; the site is currently zoned General (Retail) Commercial. Under the Land Use Plan, “Visitor-Oriented Commercial” allows a variety of commercial uses including: hang-gliding equipment sales, commercial overnight campgrounds, riding stables, inns and commercial uses dependent upon existing resources and recreational opportunities available in the area. A “General Commercial” land use designation allows a broader range of commercial uses including: retail stores and shops of light commercial character conducted within a building, such as appliance stores, banks, barber shops, beauty parlors, bookstores, cleaner or laundry agents, dress shops, drugstores, food stores, furniture shops, millinery shops, offices, radio sales, restaurants, shoe shops, studios, tailor shops, hotels, clubs, lodges, churches, and public and quasi-public uses and buildings, public utility uses and buildings, service stations, drive-in banks, dancing academies, retail plant nurseries, drive-in restaurants, and other uses with similar characteristics and which will not be detrimental or obnoxious to the neighborhood in which they are to be located.

The proposed hotel site was previously included in a 1988 EIR site evaluation of the entire 25 acre area bounded by Reservation Road, Beach Road, Seaside Circle, and Marina Drive. That EIR led to a phased approval of the Marina Landing Shopping Center which included a K-mart project and convenience store (now built), and a proposed Albertson’s Store. Exhibit 3 provides an aerial overview of the site and existing development patterns. The site for the proposed hotel at issue in this LCP amendment was not included as part of that previous City development approval, although the City has relied on the 1988 EIR for the environmental review of the current proposal



b. Standard of Review

The standard of review for land use plan amendments is the Coastal Act. Under the Act, land use plans are to indicate the kinds, locations, and intensities of uses that are allowable in various locations (PRC 30108.5). The substantive policies of Chapter 3 are the primary basis for making these determinations. In this case, the most relevant governing section of the Coastal Act is:

***Section 30222.** The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

c. Analysis and Conclusion

The general area of Reservation Road west of Del Monte Boulevard has potential for development of a desirable visitor-serving area with a number of amenities, such as the State Park, the vernal ponds in the area, and Locke Paddon Park. The attractiveness of the area to visitors and the residents of Marina may be enhanced by the introduction of additional visitor-serving commercial uses. The applicant proposes to construct an 80-unit hotel on the subject site, which will be primarily visitor-serving in nature. As noted above, the Coastal Act places a higher priority on visitor-serving uses over other type of uses such as, residential, general commercial, and industrial. Visitor-serving uses do not take priority over agriculture or coastal-dependent uses. The current land use designation for the largest segment of the site is general (retail) commercial. Although, the current land use designation would allow for a hotel at the site, re-designation of the land use and subsequent development gives clear priority to visitor-serving commercial and recreational use over other more general commercial uses, consistent with Coastal Act policy 30222.

The proposed change in land use designation is therefore consistent with policy 30222 of the Coastal Act.

2. Environmentally Sensitive Habitat Areas (ESHA)

a. Description and Background

The site consists of approximately 1.75 acres of degraded, isolated remnant inland dunes scrub, covered with mostly invasive non-native iceplant. The site is fragmented and is bounded on all sides by roads and urban development. Zander and Associates, Environmental Consultants to the developer of the site, performed a formal survey of the property on April 21, 1998 to characterize and map existing vegetation and assess potential for sensitive plant and animal species to occur on-site. Amongst the iceplant, they discovered a few scattered native plants (silver bush lupines, California sagebrush, and mock heather shrubs), as well as, two rare plant species of concern on the site. Both the federally-listed threatened Monterey spine flower (*Chorizanthe pungens* var. *pungens*), and the State-listed Threatened and Federally-listed Endangered Sand gilia (*Gilia tenuiflora* ssp. *arenaria*) were documented amid the open patches of sand.



Surveys were also performed to determine the presence of the California black legless lizard. California black legless lizard is a “California Species of Concern” that lives in a variety of vegetation types in dunes and sandy areas. They are most abundant in dune scrub habitats where native vegetation is present. Due to a lack of suitable native vegetation and habitat, coupled with the surrounding development, Zander and Associates determined the subject site would at best provide marginal habitat for a few individuals. In fact, during its survey, none were found.

If the amendment to the LCP is certified, there is a proposed project to construct an 80-unit hotel with meeting rooms, associated facilities, and parking. The area impacted by the development includes the entire site excluding the “panhandle” with Eucalyptus. Mitigation for disturbance of the rare plants currently on site is proposed off-site at Locke Paddon Park just across the street from the proposed hotel. Mitigation (catch and release) for disturbance to any California black legless lizards will be done off-site as well to a site that has yet to be determined.

b. Standard of Review

The standard of review for land use plan amendments is the Coastal Act. Under the Act, land use plans are to indicate the kinds, locations, and intensities of uses that are allowable in various locations (PRC 30108.5). The substantive policies of Chapter 3 are the primary basis for making these determinations. In this case, the most relevant governing section of the Coastal Act is:

30240: *(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Coastal Act definition of environmentally-sensitive habitat is also relevant:

30107.5: *“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

c. Analysis and Conclusion

In evaluating a proposed land use change, the Commission must analyze the on-the-ground resources and planning context at the time of the proposed LCP amendment, to assure that the land use designations are consistent with the Coastal Act. As mentioned above, there are two sensitive rare plant species of concern



on the site proposed for a change in land use designation (the spineflower and Sand gilia). Although the area was previously the site of the Brown Bulb Ranch, a large-scale flower nursery, before this it was also likely once a functioning piece of the larger Monterey Dunes system, prior to being separated from the larger system by Highway One and surrounding urban development.

Coastal dunes, of course, provide unique, sensitive habitat values. Throughout its history, the Commission has placed high priority on the protection and preservation of coastal dune systems. On the Central coast, the largest coastal dune systems include the Nipomo dunes, Asilomar Dunes, and the Monterey Dunes complex. One of the most critical functions of these dune systems is their role as habitat for unique flora and fauna that are specially adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as these natural dune systems have been reduced and fragmented over time, the risk of extinction has increased for several species. Thus, each new impact within these dunes system has and will continue to contribute to the cumulative decline of these species.

Typically, dune structures with sensitive species are defined and treated as environmentally sensitive habitat areas by the Commission, even when degraded, because of their ability to naturally restore/recover through normal ecosystem functions (wind, species movement, etc.). Coastal dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Plants like the Monterey spineflower or Sand gilia may over a year or two use up the available moisture and nutrients at a particular site, and by means of wind-blown seed “move” to a neighboring area. In this simplified model, the original site remains a bare sand surface until life’s necessities again accumulate at the original site—thereby allowing recolonization and repeating of the cycle. Thus, the overall growing area (“habitat”) needed over the long run is vastly larger than the area occupied by the plants at any one “snapshot” in time. This also explains why entire dune surfaces—not just the locations where the plants (and animals) are found in any one particular year—are typically considered ESHA.

In this case, the existing habitat on site comprises mainly remnant inland leeward dunes mostly invaded by annual grasses and ice plant. In addition, to the extent that there is a functioning “habitat” on site, it is surrounded by urban growth and bounded by streets and development (see Exhibit 2). Unlike the dunes connected to a larger ecological system (e.g., along Marina’s shoreline of Monterey Bay), it is unclear if there are any significant functional ecosystem connections operating in this case. There are certainly no direct land connections with larger dune structures along Monterey Bay.

Notwithstanding its relative isolation from the larger Monterey dunes system, there has been a sustainable population of rare plants observed flourishing over the approximately 2 acres at the site of the proposed land use change. In 1988 there were 448 sand gilia plants observed in four locations on the project site (Harvey & Stanley Associates Report, April 10, 1988). In 1999, Zander Associates counted 805 sand gilia plants. The Monterey spineflower appears to be flourishing on site as well. Because the plant species was not listed as threatened until 1994, no prior data was collected. However, the spineflower was observed in 1999 by Zander Associates at a rate of 10-20 plants per square meter, or roughly 18,000 plants for the site.



Even considering the sizable number of rare plants observed at the site, though, it is nonetheless difficult to argue that the site functions as a distinct ecosystem itself or as a significant component of a larger ecological dune system, because of its fragmented, degraded character, as well as its isolation from the larger Monterey Dunes system. Thus, there is likely an absence of physical/ecological connections functioning between the sensitive plants on site, (e.g. dependent animal or insect species that normally rely on the availability of rare plants).

At the same time, colonies of rare plants such as those found on the site may still be important at some level. For instance, according to the California Department of Fish and Game, Sand gilia has two main population centers, at Fritzsche Field on the former Fort Ord and at the East Dunes in the City of Sand City. These two areas have sparse, open vegetation with areas of open sand and have a population almost every year. The remainder of the distribution of the species, though, is in sites that have been disturbed, on roadsides, areas where there has been military training or grading, or in areas that have been burned. These sites are not constant and will likely disappear as the surrounding vegetation closes in, thus these satellite populations wink in and out. However, these populations may be important to the species as a whole as they can opportunistically occupy areas as they become available. In so doing, the distribution of the species is maintained and a viable auxiliary seed bank amassed. Survival of the species may ultimately depend on these unique, even isolated, populations during catastrophic events at primary population centers. Thus, these few remaining satellite populations can be very important in the evolutionary process of the species.

The difficulty we are faced with in cases such as the proposed amendment is in determining whether or not the site of the proposed land use change constitutes an ESHA for purposes of Coastal Act Section 30240. As we have seen, the site has and continues to support two species of rare plants. However, it is fragmented and isolated without [land] connection to the larger Monterey dunes system; the site also exhibits large annual variation in species populations, likely has no dependent insects or animals, and is of generally limited and significantly degraded habitat acreage. These facts support a finding that the site is not ESHA. Nevertheless, the subject site may be important as a contributing resource to the already scarce population of rare native coastal dune plants; and it does contain populations of rare and endangered plants, which supports a finding that the site is ESHA. Overall, while there is no question that the site has some important habitat values, it is not completely clear that the site is ESHA under the Coastal Act, at least for purposes of identifying the appropriate land use designation for the site (e.g. “resource conservation” versus the proposed “visitor-serving commercial”). That is, the biological evidence is not conclusive enough to warrant a wholesale redesignation of the site to “resource conservation” or equivalent land use category designed to preserve ESHA.

In terms of the City’s proposed LCP amendment, the certified LCP of Marina does provide some useful guidance with respect to the ESHA question. The City of Marina’s current LUP policies regarding habitat protection and mitigation were drafted and certified as part of the City’s LCP effort in 1982. The LCP currently distinguishes between “primary” and “secondary” habitats, and identifies various policies that should be applied in either circumstance. First, the LCP contains several general policy goals of the City to address sensitive habitats:

19. To promote restoration and protection of native dune habitat and vegetation.



25. *To protect the habitat of recognized rare and endangered species found in the Coastal dune area.*

26. *To regulate development in areas adjacent to recognized rare and endangered species or their habitats so that they will not threaten continuation of the species or its habitat.*

Second, the LCP defines sensitive habitats as follows:

Habitat – Primary habitat: *This term includes all of the environmentally sensitive areas in Marina. These are as follows:*

1. *Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for the survival of an endangered species. These species will be collectively referred to as “rare and endangered.”*
2. *Vernal ponds and their associated wetland vegetation. The Statewide Interpretive Guideline for Wetlands and Other Wet Environmentally Sensitive Habitat Areas (California Coastal Commission, February 14th 1981) contains technical criteria for establishing the inland boundary of wetland vegetation.*
3. *All native dune vegetation, where such vegetation is extensive enough to perform the special role of stabilizing Marina’s natural sand dune formations.*

Habitat – Secondary habitat: *This term refers to areas adjacent to primary habitat areas within which development must be sited and designed to prevent impacts which would significantly degrade the primary habitat. The secondary habitat area will be presumed to include the following, subject to more precise determination upon individual site investigation:*

1. *The potential/known localities of rare and endangered plant species as shown on “Disturbed Vegetation” map in Marina Local Coastal Program.*
2. *The potential wildlife habitats as shown on “Potential Wildlife Habitats” map in the Marina Local Coastal Program.*
3. *Any area within 100 feet of the landward boundary of a wetland primary habitat area.*

The LCP then specifies a site-specific assessment approach in order to protect so-called primary and secondary habitats [emphasis added]:

Because site-specific study is needed in many areas before any development can take place the following policies apply to all of the areas indicated on the map or meeting the definitions of Exhibit “A” [primary and secondary habitat] as being potential habitats for rare and endangered plants and animals.



- *Before any use or change in use, areas identified as potential habitat for rare and endangered plant or animal species shall be investigated by a qualified biologist to determine the physical extent of the primary habitat areas for the specific rare and endangered plants and animals on that site.*
- ***Primary habitat areas shall be protected and preserved.** All development must be sited and designed so as not to interfere with the natural functions of such habitat areas. Management and enhancement opportunities should be incorporated into use or development proposals; potential impacts shall be mitigated.*
- ***Potential secondary or support habitat areas to the primary habitats identified on the site should also be defined.** Secondary habitat investigation should include identification of the role and importance of the secondary area to the primary habitat area and should stress the impact of use or development in the secondary area on the primary habitat. **All development in this area must be designed to prevent significant adverse impacts on the primary habitat areas.** In concert with State law, City ordinances shall require environmental review and appropriate mitigation of identified impacts for all development in the Coastal Zone.*
- ...
- *Available evidence indicates that dune vegetation is more resilient than previously thought, and areas damaged by illegal use or negligence shall be considered restorable and eligible for restoration.*
- ***Where habitats of rare and endangered species are located on any parcel, owners and/or operators shall, at such time that development is proposed, develop and execute a Management Plan which will protect identified rare and endangered plant and animal communities.** Each plan should be drawn up by a qualified biologist in co-operation with the property owner developer.*

The approach taken in the certified Marina LCP thus distinguishes between “primary habitat,” which was intended to address the avoidance and protection of “environmentally sensitive habitat areas” required by sections 30240 and 30107.5; and “secondary habitat,” which addresses the need to prevent significant disruption of ESHA under 30240, particularly concerning development proposed adjacent to primary habitat (ESHA). At the time of LCP certification, there was no specific identification of the various habitat areas in Marina’s coastal zone, other than the broad mapping of known habitat and potential habitat areas, and it was left to the process of site-specific biological assessment to determine the appropriate treatment of an area in any given case.

The importance of this two-level distinction is to allow for development to occur, provided that the development is designed to prevent adverse significant impacts to the primary habitat areas and to ensure that any disruptions are adequately mitigated. As for mitigation, the City’s Implementation Plan and zoning ordinances require environmental review and appropriate mitigation of adverse impacts for all development in its Coastal Conservation and Development District (mainly west of Highway 1), but these



requirements do not appear to extend to any other zone district, such as the General Commercial zone at issue here. Also note, adequate protection measures and specific mitigation criteria that would provide guidance in issuing coastal development permits have not been developed and incorporated into the LCP.

In terms of the existing LCP, the site proposed for redesignation may or may not constitute primary habitat (ESHA), but this is a site-specific determination for the City to make at the time of reviewing a development proposal for a coastal development permit. The City has already taken an action of the hotel development proposed for the site. In its analysis of the site and potential impacts associated with the land use change, the City relied upon the 1988 Marina Landing Shopping Center EIR. The City determined that the proposed project is consistent with the scope of the 1988 Marina Landing EIR and that the EIR constitutes adequate environmental review according to CEQA. The City's Planning Commission found that the need for a subsequent or supplemental EIR was not necessary and that there is no evidence the project will individually or cumulatively have any adverse environmental impact on fish or wildlife resources. A restoration and mitigation plan also was prepared by Rana Creek Associates, consultants to the developer of the property, to satisfy the requirements of the EIR (see Exhibit 4). In characterizing the habitat value of the site the plan concludes, in part:

The existing habitat to be developed is comprised of remnant inland dunes mostly invaded by non-native annual grasses and Hottetot fig. The habitat is surrounded by urban growth and bounded by streets and development. Removal of the sand gilia and spine flower would occur for construction of a proposed Holiday Inn Express on the BT Development project site. Onsite mitigation is not feasible given the limited size and location of the property. There would be little ecological value in preserving or enhancing habitat on site. CDFG concurs with this finding during a site visit and consultation with the applicant. Therefore, offsite mitigation is proposed. An appropriate offsite mitigation area was identified in collaboration with the Monterey Peninsula Regional Park District (MPRPD). The off-site area selected is historical hind dune scrub habitat in Locke-Paddon Park, which is located on the south side of Seaside Circle across the street from the property to be developed (see appended maps). The mitigation site will have extensive invasive species control, and be planted with native dune scrub species including Monterey spineflower and sand gilia. The project will also include environmental education in the form of informative signage within the park, and a brochure available to visitors of the hotel. The site is appropriate because it currently contains remnant colonies of Monterey spineflower. (Exhibit 4)

Based on this report, and the Zander habitat assessment, the City of Marina made the following coastal development permit finding to address LCP requirements to protect sensitive habitat:

There is little ecological value in preserving or enhancing the habitat on the site given the urbanization and fragmentation of this site from intact dunes. The loss of habitat on this site will be mitigated by off-site restoration of a primary habitat area west of Dunes Drive. (City of Marina CDP Findings, #4)

Although the City has already approved the CDP for the project, this approval is nonetheless subject to and



contingent upon Commission certification of this LCP amendment request. In order to assure that this application of LCP ESHA policies is consistent with the Coastal Act in this case, based on the foregoing discussion, it is apparent that the LCP ESHA policies need to be updated to provide more clear direction for potential development proposals on the site concerning the appropriate identification, protection, and mitigation of habitat impacts. The Commission has learned a great deal since 1982 concerning the ecology and functioning of dune systems, particularly concerning the importance of entire system values and ecological roles, such as bare sand areas, as opposed to the more limited focusing on existing plants and their locations. Currently, the LCP includes rare plant areas as primary habitat (ESHA), but does not include the broad notion of ecosystem value included in the Coastal Act definition of ESHA. Amending the LCP to address the ecosystem basis for identifying ESHA is important in cases like this. For example, it is clear that the site contains rare and sensitive plant species, but nonetheless, it is not clear that the site would fall under the primary habitat definition of the LCP based on its biological circumstances, precisely because of the uncertainty about the larger ecological significance of the site. The Commission finds, therefore, that modification A1 is necessary to assure that the proposed land use change for the parcel is consistent with the Coastal Act.

Similarly, the LCP should be updated to better reflect the Commission's knowledge and improved understanding about habitat mitigation. Thus, whether the site at issue qualifies as "primary" or "secondary habitat," the LCP should have improved mitigation policies to assure consistency with the section 30240 requirement of "no significant disruption" to areas with habitat values. In this case, the City and the developer have already contemplated and developed a mitigation plan, in consultation with the Department of Fish and Game, that would restore habitat on an adjacent site. As previously mentioned, the City relied upon the 1988 Marina Landing Shopping Center EIR for its evaluation of the subject site. The EIR concluded that the site was a degraded and fragmented inland dune community, cleared of much of its natural vegetation. Based on the conclusions of the Final EIR and as defined in the City's LCP, the City concluded that the site constitutes secondary habitat. Primary habitat, as defined in the City's LCP, includes all environmentally sensitive areas (ESHA). After review of the biological evidence and in consultation with the Department of Fish & Game, the Commission's staff biologist has concurred with this assessment of the site.

The EIR, though, did note that the uncultivated areas including the southwest knoll (Bruno's property) potentially contained sensitive species and as per its recommendation, the City consulted to have the subject site surveyed for plant and animal species during the flowering season. Again, in 1998, Zander & Associates surveyed the site and confirmed the presence of sensitive plant species. The City's Land Use Plan policies for secondary habitat require that any disruptions of the habitat values be adequately mitigated. Based on recommendations from the Department of Fish & Game, the developer's consultant prepared a mitigation and restoration plan that calls for an off-site restoration and revegetation plan.

Coastal staff and biologists from the Department of Fish & Game became involved in evaluating the project and the proponent's Mitigation Plan for the loss of sensitive species. Though not directly within the scope of the LCP amendment, project oversight by staff was necessary to ensure that the planned change in land use designation is appropriate to address Coastal Act ESHA policies, and would allow for the type of development that was being proposed. Of particular concern to the Commission are the types of mitigation and restoration requirements that assure restoration success, such as adequate mitigation rations, monitoring



requirements, etc. In general, a minimum of 2:1 restoration ratios are needed to adequately mitigate direct habitat impacts from development. After reviewing the mitigation plan (Exhibit 4), the Commission generally concurs with the proposed mitigation and approach. Nonetheless, to assure that this mitigation has a high likelihood of success, Modification A2 proposes changes to the LUP (with corresponding IP changes discussed below), to address the Commission's more recent understandings and experience with respect to necessary mitigation requirements, and to assure conformance with Coastal Act section 30240.

3. Visual Resources

Coastal Act 30253 requires the protection of visual resources. The site proposed for redesignation is inland of Highway One in an already urbanized area. As evaluated by the City, the proposed hotel that would be located on the site would not impact any views to the ocean. Nor would the project site be visible from the shoreline due to the Marina Dunes landform that lies between Highway One and the ocean. The proposed hotel would be visible from Highway One as one looks inland, but it would be located in an already urbanized area, in the vicinity of the K-mart shopping center.

In terms of the LCP amendment in front of the Commission, the City's proposal does not substantively change existing LCP requirements. The zoning that applies for the current General Commercial land use designation (planned commercial) has a height limit of 35 feet. This zoning remains the same for the proposed change to visitor-serving commercial. With respect to the actual building height approved by the City in its coastal development permit, the development is a three-story hotel that has been constrained to 37 feet or no greater than 20 feet above the top of the existing knoll, which would be graded down. Visual impacts to views in the surrounding area are proposed to be mitigated using appropriate landscaping such as planting Monterey Cypress, Fern Pine, and Coast Live Oak, particularly along Seaside Circle across from Locke Paddon Park. Exhibit 5 shows illustrations of the proposed hotel.

Also relevant, LCP Amendment 1-88 (Marina Landing Shopping Center) increased the building site coverage allowance from 25% to 30% over the area bounded by Beach Road, Reservation Road, Marina Drive, and Seaside Circle. Seaward of Highway One, though, the Commission limited building coverage to a maximum of 25%, with possible further limitations, to address concerns about the bulk and scale of development in sensitive visual areas. The building site coverage for the proposed 80-unit hotel at Reservation Road and Seaside Circle is 23.2%. Furthermore, although the EIR assessed the habitat values of the entire Brown Bulb Ranch, the Marina Landing Shopping Center project did not encompass the southwest knoll (Bruno property) at Reservation Road and Seaside Circle. As such, there are no encumbrances on the Bruno property requiring it to remain as open space, nor does the Bruno property acreage enter into the overall estimation of building site coverage and open space calculations for the Marina Landing Shopping Center CDP. The City's LCP amendment would change a small area of open space zoning in the existing public right-of-way to allow for the expanding commercial zoning. Overall, the proposed LCP amendment does not change the existing visual policies and ordinances, which remain adequate for conformance with Coastal Act 30253.

B. Implementation Plan Amendment



1. Visitor-Serving Land Uses and ESHA

a. Description and Background

The proposed amendment to the Implementation Plan is to the zoning map. It involves the zoning of the abutting street right-of-way from a combination of Open Space and Low Density Residential to Planned Commercial. Planned Commercial allows for the development of a business area as a primarily retail shopping facility to serve present and future needs of coastal visitors and the residential community, with emphasis on preserving and expanding the characteristics of the area in which the commercial use is proposed.

In the Coastal Zone the uses permitted shall be determined by the Local Coastal Land Use Plan and a Coastal Development Permit shall be required. Such uses shall include but not be limited to visitor-oriented retail and service uses, accommodations and public access.

As noted in the land use plan findings, the purpose of the amendment is to facilitate development of a hotel. Specifically these two areas in question are now City rights-of-way that are to be acquired by the hotel developer.

b. Standard of Review

The standard of review is the certified land use plan. As described above, the land use plan designation is being amended to be visitor-oriented commercial. It is also being modified to better address habitat protection and mitigation standards.

c. Analysis and Conclusion

In general, the proposed planned commercial zoning designation is appropriate to implement the visitor-oriented commercial land use designation as the list of permitted uses are similar and not in conflict with land use designation. However, as noted in the above findings, the land use plan amendment needs to be modified to include improved habitat protection and mitigation policies. The Implementation Plan thus lacks standards adequate to carry out the modified land use plan. Therefore, the proposed amendment would be inconsistent with the land use plan as amended and modified and hence can not be approved as submitted.

The proposed implementation plan amendment can be further revised to address the above-mentioned deficiency. Specifically, the recommended revisions to the IP include modifications to update the definition of primary habitat and includes detailed implementation standards for habitat mitigation and restoration plans. As discussed in the land use plan findings, the Commission has new knowledge and experience with the appropriate mitigation of sensitive habitat impacts. Modifications A2, B1, and B2 are therefore necessary. Furthermore, the project proponent's mitigation and habitat restoration plan has been reviewed by Coastal staff and Fish & Game staff and determined to be consistent with the City's Implementation Plan, as modified. Therefore, as so modified, the implementation plan amendment is approved as being consistent with and adequate to carry out the certified land use plan as amended and further modified.



D. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for Local Coastal Programs and amendments to them has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does utilize any environmental information that the local government has developed. In this case, the City of Marina considered the specific hotel project in conjunction with the LCP amendments. The City made an environmental determination that the proposed project is consistent with the scope of the previously approved 1988 Marina Landing Shopping Center EIR and that the 1988 EIR constitutes adequate review under CEQA. The findings in this report are consistent with the City's environmental analysis. Modifications have been suggested that will further assure that any adverse environmental impacts will not occur or will be mitigated. Approval of the amendment, as modified, will not have significant environmental effects for which feasible mitigation measures have not been employed consistent with the California Environmental Quality Act.

